

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

CONSTANCE A. CAPP,

Plaintiff,

VS.

**JO ANNE B. BARNHART,
COMMISSIONER, SOCIAL
SECURITY ADMINISTRATION,**

Defendant.

CASE NO. 4:04CV3367

MEMORANDUM AND ORDER

This matter is before the Court on the Motion for Attorney Fees (Filing No. 17) filed by the Plaintiff, Constance A. Capp, and the attached itemization. The application for attorney fees is filed pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d). The Court also notes the Response submitted by the Defendant, Jo Anne B. Barnhart, Commissioner of Social Security (Filing No. 18).

The Court entered Judgment reversing the matter and remanding the case to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g). (Filing Nos. 15, 16.)

Subsequently, the Plaintiff's attorney filed an application for attorney fees requesting a total of \$5,180.53 plus the \$150.00 filing fee. The parties then jointly agreed to an award of attorney fees in the amount of \$4,000.00 and reimbursement of the filing fee in the amount of \$150.00.¹ Because the requested hourly rate exceeds the usual rate of \$125 per hour established in the 1995 amendment to 28 U.S.C. § 2412(d)(2)(D)(2)(A), the Plaintiff's attorney has submitted information regarding the increase in cost of living since 1995. The Court determines, pursuant to § 2412(d)(2)(D)(2)(A), that an increased cost of

¹Since the filing of this case, the Clerk's filing fee has increased to \$250.00.

living justifies the fee to the extent that the fee agreed upon by the parties exceeds the usual rate.

After reviewing the record, the briefs, the supporting Affidavits, and the applicable law, the Court finds that an award of attorney fees is appropriate in the amount agreed upon by the parties. The Court will order payment of fees to the Plaintiff's attorney.

The Commissioner requests that the amount requested for costs, i.e., \$150.00 for the Clerk's filing fee, be paid from the Judgment Fund administered by the United States Treasury as opposed to Social Security Administration appropriations. After reviewing the record, the briefs, counsel's Affidavit, and the applicable law, the Court finds that an award of costs in the amount of \$150.00 is appropriate. The Court contemplates that both the fees and costs will be paid as generally provided under 28 U.S.C. § 2412, as the statute relates to attorney fees and costs.

IT IS ORDERED:

1. The Plaintiff's Motion for Attorney Fees (Filing No. 17) is granted in part and denied in part;
2. The Plaintiff is awarded attorney fees in the amount of \$4,000.00, and costs in the amount of \$150.00, payable to Ross E. Stubblefield, Plaintiff's attorney.

DATED this 27th day of December, 2005.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge